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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-982]

Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, *see* the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: [Insert Date of Publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Patricia Tran, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-4793 and 202-482-1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

This investigation, which covers 54 programs, was initiated on January 18, 2012.¹ The Petitioner in this investigation is the Wind Tower Trade Coalition.² The respondents in this

¹ See *Utility Scale Wind Towers From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 77 FR 3447 (January 24, 2012) (*Initiation Notice*), and accompanying Initiation Checklist.

² The following companies compose the Wind Tower Trade Coalition: Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc.

investigation are: CS Wind China Co., Ltd. and its affiliates (collectively, CS Wind) and Titan Wind Energy (Suzhou) Co., Ltd. and its affiliates (collectively, the Titan Companies).

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

Case History

The events that have occurred since the Department published the *Preliminary Determination*³ on June 6, 2012, are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from the People's Republic of China (Decision Memorandum).⁴

Scope of the Investigation

The merchandise covered by this investigation are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell,

³ See *Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422 (June 6, 2012) (*Preliminary Determination*).

⁴ Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 7308.20.0020⁵ or 8502.31.0000.⁶ Prior to 2011, merchandise covered by this investigation was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

⁵ Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

⁶ Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades).

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.⁷ On February 7, 2012, we received scope comments from the Petitioner.

The Department considered Petitioner's comments and issued its decision to not adopt the revised scope language proposed by Petitioner in the preliminary determination of the companion antidumping (AD) investigation.⁸ For the final determination, the Department received comments regarding the scope of the investigation from Petitioner, Chengxi Shipyard Co., Ltd., and Titan Companies. After analyzing the comments, the Department has made no changes to the scope of this investigation. For a complete discussion of this issue, see the Issues and Decision Memorandum at Comment 4 of the AD investigation.

Analysis of Subsidy Program and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Decision Memorandum, dated concurrently with this notice and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via IA ACCESS. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

⁷ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice*, 77 FR 3447-8.

⁸ See *Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 46034, 46035-36 (August 2, 2012).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Tariff Act of 1930, as amended (the Act), we have calculated an individual rate for each producer/exporter of the subject merchandise investigated. We determine the total net countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy Ad Valorem Rate
CS Wind China Co., Ltd., CS Wind Tech (Shanghai) Co., Ltd., and CS Wind Corporation (collectively, CS Wind)	21.86 percent
Titan Wind Energy (Suzhou) Co. Ltd. (Titan Wind), Titan Lianyungang Metal Product Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Power Equipment Co., Ltd. (Titan Baotou), and Shenyang Titan Metal Co., Ltd. (Titan Shenyang) (collectively, Titan Companies)	34.81 percent
All Others	28.34 percent

Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all others” rate by weight averaging the rates of CS Wind and the Titan Companies, because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two responding firms’ rates.

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for

consumption on or after June 6, 2012, the date of the publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered or withdrawn from warehouse, on or after October 4, 2012, but to continue the suspension of liquidation of all entries from June 6, 2012, through October 3, 2012.

If the ITC issues a final affirmative injury determination, we will issue a CVD order, we will instruct CBP to reinstate the suspension of liquidation under section 706(a) of the Act, and we will instruct CBP to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

December 17, 2012 _____
Date

APPENDIX - List of Comments and Issues in the Decision Memorandum

General Issues

- Comment 1: Application of CVD Law to China
Comment 2: Simultaneous Application of CVD and AD Non-Market Economy Measures

Preferential Policy Lending

- Comment 3: Specificity of Preferential Policy Lending
Comment 4: Whether State-Owned Commercial Banks Are Authorities
Comment 5: Use of an In-Country Benchmark to Measure the Benefit from Preferential Policy Lending
Comment 6: Flaws in the Calculation of the External Preferential Policy Lending Benchmark

Export Buyer's Credits Program

- Comment 7: Application of Adverse Facts Available (AFA) to the Export Buyer's Credits Program
Comment 8: Selection of AFA Rate for Export Buyer's Credits
Comment 9: Treatment of the AFA Rate for Export Buyer's Credits in the AD Investigation

Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR)

- Comment 10: Whether HRS Allegation Was Sufficient to Initiate an Investigation
Comment 11: Whether Application of AFA for HRS for LTAR Establishes the Existence of a Financial Contribution
Comment 12: Whether HRS Producers are Authorities
Comment 13: Specificity Finding for HRS for LTAR
Comment 14: Whether HRS Purchases are Alloy or Non-Alloy
Comment 15: Construction of HRS Benchmark

Provision of Electricity for LTAR

- Comment 16: Electricity Benchmarks

Tax Programs

- Comment 17: *De Jure* Specificity of Three Tax Programs; Whether the Tax Programs Are Limited to Certain Enterprises or Groups of Enterprises

Company-Specific Issues

- Comment 18: Allocation of CS Wind's Grants
Comment 19: Value Added Tax and Import Duties in the HRS Benchmark Used to Calculate CS Wind's Benefit
Comment 20: Whether the Department Should Apply Total AFA for HRS for LTAR with Respect to Titan Companies
Comment 21: Titan Companies' Sales Denominator

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